

SEYFARTH SHAW LLP
Brian T. Ashe (SBN 139999)
bashe@seyfarth.com
Shireen Yvette Wetmore (SBN 278501)
swetmore@seyfarth.com
560 Mission Street, 31st Floor
San Francisco, California 94105
Telephone: (415) 397-2823
Facsimile: (415) 397-8549

SEYFARTH SHAW LLP
Kyle A. Petersen (ISBN 6275689) (admitted *pro hac vice*)
kpetersen@seyfarth.com
131 South Dearborn Street, Suite 2400
Chicago, Illinois 60603
Telephone: (312) 460-5000
Facsimile: (312) 460-7000

Attorneys for Defendants
DIGITAL REALTY TRUST, INC. and ELLEN JACOBS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PAUL SOMERS, an individual,

Plaintiff,

V.

DIGITAL REALTY TRUST, INC., a Maryland corporation; ELLEN JACOBS, an individual, and DOES ONE through TEN, inclusive.

Defendants.

Case No. 3:14-cv-05180 EMC

**DEFENDANTS' OBJECTION AND
MOTION TO STRIKE DKT. NO. 301,
LATE-FILED EXHIBIT TO PLAINTIFF'S
MOTION FOR RECUSAL**

1 Defendants DIGITAL REALTY TRUST, INC. and ELLEN JACOBS object to the late-filed
2 Exhibit A [Dkt. No. 301], submitted by Plaintiff Paul Somers today in support of his Motion Requesting
3 Recusal, as follows:

4 **OBJECTIONS TO DOCKET NO. 301:**

5 1. Dkt. No. 301, “Supplement Paul Somers Declaration,” Exhibit A (pp. 2-3)

6 Objection: Inadmissible Hearsay. Lacks foundation. Best Evidence Rule. *See* Fed. R.
7 Evid. 802, 901, 1002. The document is not authenticated. Defendants respectfully request the Court to
8 sustain the above objections.

9 **MOTION TO STRIKE DOCKET NO. 301:**

10 The document filed as Docket No. 301 was apparently filed in support of a pending motion for
11 recusal. It not timely filed.

12 Plaintiff’s Motion Requesting Recusal was filed on March 20, 2018. [Dkt. No. 288.]
13 Defendants timely opposed Plaintiff’s motion on April 3, 2018, noting the absence of an Exhibit A to
14 Plaintiff’s Declaration filed in support of his motion. [Dkt. Nos. 292-294.] Ten days after the
15 Opposition was filed, on April 13, 2018, Somers filed Docket No. 301, a document bearing a cover page
16 saying, “Exhibit A.” There was no explanation accompanying this filing and no excuse provided for
17 attempting to assert new evidence into the record after the briefing on this motion has been completed.

18 Defendants have been prejudiced. They did not have the benefit of Plaintiff’s exhibit prior to
19 filing their Opposition. Plaintiff’s Exhibit has not been authenticated, contains unexplained redactions,
20 and may purport to provide evidence to support Plaintiff’s motion (without any explanation from Mr.
21 Somers, this is an assumption only).

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1 Defendants move to strike Plaintiff's untimely and prejudicial entry at Docket No. 301. If the
2 Court denies this motion, then Defendants request that the Court allow Defendants to respond to this
3 filing substantively on April 17, 2018.

4
5 DATED: April 13, 2018

Respectfully submitted,
SEYFARTH SHAW LLP

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8 By: /s/ Brian T. Ashe
9 Brian T. Ashe
Kyle A. Petersen (admitted *pro hac vice*)
Shireen Yvette Wetmore

10 Attorneys for Defendants
11 DIGITAL REALTY TRUST, INC.
and ELLEN JACOBS